

Message Text

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PAGE 01 USUN N 02140 01 OF 02 122305Z

72

ACTION IO-14

INFO OCT-01 ISO-00 DLOS-07 AF-10 ARA-16 EA-11 EUR-25

NEA-14 RSC-01 OIC-04 COA-02 EB-11 FEA-02 JUSE-00

INT-08 COME-00 DOTE-00 NSF-04 OMB-01 TRSE-00 SWF-02

AGR-20 ACDA-19 AEC-11 CG-00 FMC-04 EPA-04 SCI-06

CEQ-02 CIAE-00 DODE-00 PM-07 H-03 INR-10 L-03 NSAE-00

NSC-07 PA-04 PRS-01 SP-03 SS-20 USIA-15 DRC-01 /273 W

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TO SECSTATE WASHDC 4419

INFO AMEMBASSY CARACAS

C O N F I D E N T I A L SECTION 1 OF 2 USUN 2140

E.O. 11652: GDS

TAGS: PFOR PBOR UN

SUBJ: LOS CONFERENCE--RULES OF PROCEDURE AND GENTLEMAN'S
AGREEMENT

SUMMARY: THIS TEL REPORTS ON DISCUSSIONS IO AND 11 JUNE
UNDER AMERASINGHE CHAIRMANSHIP OF LOS CONFERENCE RULES OF
PROCEDURE AND RELATIONSHIP OF GENTLEMAN'S AGREEMENT. ON
RULES OF PROCEDURE, FOCUS ON EFFORT HAS BEEN ATTEMPT BY
UK AND 7-POWER COSPONSORS TO AMALGAMATE THEIR PROPOSALS
FOR RULE 37 CONCERNING DEFERRING THE TAKING OF A VOTE AT
REQUEST OF 15 OR MORE DELEGATES. LIKELIHOOD OF CONSULTATIONS
DURING CURRENT WEEK PRODUCING AGREED TEXT OF RULE 37 IS NOT
GREAT. ON THE OTHER FOCUS OF CONSULTATIONS HAS BEEN EFFORT,
LED PRINCIPALLY BY US AND FRANCE, TO PRODUCE CONFERENCE ACTION
TO TAKE OVER AS A CONFERENCE DECISION THE
GENTLEMAN'S AGREEMENT ADOPTED BY 28TH UNGA RELATING TO
NO VOTING BEFORE EXHAUSTION OF ALL CONSENSUS EFFORTS.
THE OUTLOOK HERE IS DISTINCTLY BETTER; ALTHOUGH CHINA AND
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PAGE 02 USUN N 02140 01 OF 02 122305Z

TANZANIA ARE PRINCIPAL OBSTACLES, THERE IS WIDESPREAD

AGREEMENT TO HAVING AMERASINGHE READ TEXT OF GENTLEMAN'S AGREEMENT INTO RECORD OF CONFERENCE AND HAVE RECORD NOTE ABSENCE OF ANY OBJECTION TO CONTENTS OF HIS STATEMENT. END SUMMARY.

1. DETAILS. RULE 37. WILL BE RECALLED THAT 7-POWER PROPOSAL OF 28 FEBRUARY (USUN 700) AND UK PROPOSAL OF 1 MARCH (USUN 722), WHICH WERE MAIN OUTCOME OF LATE-FRBRUARY ROUND OF AMERASINGHE PROCEDURES CONSULTATIONS, SEEK TO AMPLIFY DRAFT SECRETARIAT TEXT, WHICH WOULD PROVIDE THAT, WITH CERTAIN EXCEPTIONS, PRESIDENT OR MAIN COMMITTEE CHAIRMAN MAY DEFER TAKING OF ANY VOTE UNTIL A SUBSEQUENT MEETING BUT THAT NORMALLY NO VOTE SHALL BE DEFERRED MORE THAN TWICE. CURRENT DISCUSSIONS HAVE CENTERED ON VARIOUS ASPECTS. ONE ASPECT IS LENGTH OF TIME PRESIDING OFFICER MAY DEFER A VOTE, WITH FRANCE MOST STRONGLY SUPPORTING UK PROPOSAL TO HAVE RULE 37 MERELY PROVIDE THAT THE TIME SHOULD BE "REASONABLE" WITH DURATION DECISION TO BE MADE ON AN AD HOC BASIS BY PRESIDING OFFICER. MOST ADAMANT AMONG 7 POWERS IN OPPOSING THIS FORMULATION AS GIVING TOTAL AND POTENTIALLY ABUSIVE DISCRETION TO PRESIDING OFFICER HAVE BEEN AUSTRALIA AND NORWAY. WE HAVE LEARNED THAT 7 POWERS ARE DIVIDED AMONG THEMSELVES AS TO OPTIMUM LENGTH OF DEFERRAL PERIOD; SOME WANT A PERIOD AS SHORT AS 3 DAYS WHILE OTHERS WANT 7. NONE APPARENTLY WILL AGREE TO MORE THAN 7. IN GROUP OF 5 DISCUSSION EVENING 10 JUNE, UK, USSR AND JAPAN APPEARED PREPARED TO CONSIDER A PERIOD OF 10 TO 14 DAYS ALTHOUGH THEY WERE NOT OPTIMISTIC AS TO ITS NEGOTIABILITY; FRANCE, HOWEVER, OPPOSED ANY FIXED AND UNALTERABLE TIME LIMIT AS LIKELY TO PROMOTE INTRANSIGENCE DURING DEFERRAL PERIOD. SOME PROGRESS, AS YET NOT REFLECTED TEXTUALLY, MAY HAVE BEEN MADE 11 JUNE WHEN SPAIN PROPOSED THAT PRESIDING OFFICER SHOULD DEFER A VOTE UP TO BUT NOT EXCEEDING A MAXIMUM OF BLANK DAYS (WHICH RULE WOULD SPECIFY) BUT THAT RULE ALSO STATE THAT, IF CONSENSUS EFFORTS ARE NOT SUCCESSFUL AT END OF DEFERRAL PERIOD, ORGAN CONCERNED COULD (PRESUMABLY BY SIMPLE MAJORITY VOTE) TAKE A DECISION FOR AN ADDITIONAL PERIOD OF DEFERMENT, WHICH, ACCORDING TO RULE, WOULD BE FOR A REASONABLE AND LIMITED TIME; IN THIS LATTER CASE, HOWEVER, RULE WOULD NOT LAY DOWN A FIXED

CONFIDENTIAL

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PAGE 03 USUN N 02140 01 OF 02 122305Z

MAXIMUM.

2. OBLIGATION OF PRESIDENT OR MAIN COMMITTEE CHAIRMAN TO REPORT AT END OF DEFERRAL PERIOD ON RESULTS OF HIS CONCILIATION EFFORTS HAS BEEN GENERALLY ACCEPTED. ALSO, IN KEEPING WITH GROUP OF 5, AND ESPECIALLY USSR, PREFERENCE, AGREEMENT SEEMS IN PROCESS OF BEING ACHIEVED THAT GENERAL COMMITTEE SHOULD CONSIDER MATTER AND REPORT DURING DEFERRAL

PERIOD; IF THERE WERE DISAGREEMENT WITHIN GENERAL COMMITTEE ON TIMELINESS OF VOTING ON A PARTICULAR MATTER, ITS REPORT WOULD SO STATE.

3. MOST DIFFICULT ASPECT OF RULE 37 PROPOSALS CONCERNS VOTING MAJORITY REQUIRED WHEN A DEFERRAL PERIOD HAS NOT YIELDED GENERAL AGREEMENT ON MATTERS AT ISSUE AND OBJECTION TO PROCEEDING TO THE VOTE PERSISTS. UK PROPOSAL WAS THAT, IN MAIN COMMITTEE, A DECISION TO GO TO THE VOTE SHOULD REQUIRE A MAJORITY OF REPRESENTATIVES OF STATES PARTICIPATING IN PARTICULAR SESSION OF CONFERENCE; BY CONTRAST, THE 7-POWER TEXT EMBODIES TRADITIONAL SIMPLE MAJORITY PRACTICE. OPPOSITION OF 7 POWERS AND ALMOST EVERYONE ELSE TO A DEPARTURE FROM TRADITIONAL PRACTICE IN CONTEXT OF MAIN COMMITTEE VOTING IS EXTREMELY STRONG; FEARS CONCERNING USE WHICH SUCH A RULE MIGHT IN SUBSEQUENT NON-LOS CONTEXTS BE PUT ARE GREAT. ON OTHER HAND, SITUATION IN CONTEXT OF VOTING IN PLENARY IS LESS DIFFICULT; THERE, UK PROPOSES A TWO-THIRDS MAJORITY OF STATES PARTICIPATING IN THAT SESSION OF CONFERENCE (A THEME TAKEN FROM US PROPOSALS), WHILE 7 POWERS, IN AN EFFORT TO MOVE TOWARD MARITIME NATION VIEWS, HAVE PROPOSED A TWO-THIRDS MAJORITY OF THOSE PRESENT AND VOTING. IN THIS LATTER REGARD THE 7-POWER TEXT, LIKE SECRETARIAT TEXT, DEPARTS HELPFULLY FROM TRADITIONAL RULE THAT A DECISION TO VOTE, AS OTHER PROCEDURAL DECISIONS, MERELY REQUIRED A MAJORITY OF THOSE PRESENT AND VOTING. THERE HAS BEEN GENERAL RECOGNITION THAT DETAILS OF VOTING REQUIREMENT IS MOST DIFFICULT ASPECT OF TWO RULE 37 PROPOSALS, AND THEY HAVE NOT BEEN DISCUSSED IN ANY DEPTH. IT REMAINS UNCLEAR WHETHER THERE IS ANY POSSIBILITY OF PRODUCING MOVEMENT TOWARD SOME MID-WAY SUGGESTION SUCH AS SPANISH PROPOSAL TO REQUIRE THAT ABSTENTION BE COUNTED IN DETERMINING, AS CASE MAY BE, WHETHER A SIMPLE OR TWO-THIRDS MAJORITY

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PAGE 04 USUN N 02140 01 OF 02 122305Z

WISHES TO VOTE, THUS EXCLUDING POSSIBILITY OF A DECISION BY A MINORITY OF PARTICIPANTS TO PROCEED TO THE VOTE.

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PAGE 01 USUN N 02140 02 OF 02 122258Z

72

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C O N F I D E N T I A L SECTION 2 OF 2 USUN 2140

4. IN GROUP OF 5 DISCUSSIONS, FRANCE AND, MORE RECENTLY, JAPAN HAVE TAKEN VIEW THAT IMPROVEMENTS IN SECRETARIAT DRAFT OF RULE 37 ARE LIKELY TO BE SO DIFFICULT TO ACHIEVE AND SO INSUBSTANTIAL IN RESULT THAT MAJOR MARITIME POWERS WOULD DO BETTER TO CONCENTRATE ON INSURING THAT CONFERENCE TAKES OVER FOR ITS OWN GUIDANCE GENTLEMAN'S AGREEMENT APPROVED LAST YEAR BY UNGA. IN AM DISCUSSION 11 JUNE, UK PROPOSED A RESOLUTION TO BE ADOPTED BY CONFERENCE DURING ITS OPENING DAYS WHICH WOULD ACCURATELY REAFFIRM GENTLEMAN'S AGREEMENT. BRITISH PROPOSED REPEATING THE CONSIDERATION CLAUSE OF GENTLEMAN'S AGREEMENT CONCERNING INTERRELATION OF OCEANS PROBLEMS AND DESIRABILITY OF ADOPTING A MOST WIDELY ACCEPTED LOS CONVENTION; CONFERENCE WOULD THEN REAFFIRM APPLICATION TO ITS WORK OF GENTLEMAN'S AGREEMENT THAT CONFERENCE SHOULD "MAKE EVERY EFFORT TO REACH AGREEMENT ON SUBSTANTIVE MATTERS BY WAY OF CONSENSUS AND THERE SHOULD BE NO VOTING ON SUBSTANTIVE MATTERS UNTIL ALL EFFORTS AT CONSENSUS HAVE BEEN EXHAUSTED." WHEN CHINA AND TANZANIA RESTATED THEIR EARLIER OBJECTIONS TO ANY CONFERENCE
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PAGE 02 USUN N 02140 02 OF 02 122258Z

ACTION ON GENTLEMAN'S AGREEMENT, THE UK, FRANCE AND JAPAN, JOINED BY CANADA AND SPAIN, SAID THEY COULD EQUALLY ACCEPT, INSTEAD OF A CONFERENCE RESOLUTION, AN APPROPRIATELY WORDED STATEMENT BY CONFERENCE PRESIDENT WHICH WOULD BE READ INTO RECORD AND WOULD BE CONSIDERED AS HAVING BEEN ADOPTED WITHOUT OBJECTION (AND RECORD WOULD SO STATE). ZAMBIA SUPPORTED A RESOLUTION. PRIVATELY, SOVIETS TOLD US THEY WOULD ALSO ACCEPT A "DECISION"

RATHER THAN A "RESOLUTION". WHILE REPORTING OFFICER NOTED IN GROUP OF 5 AGREEMENT THAT THERE IS NO LEGAL DISTINCTION BETWEEN A RESOLUTION AND AN AGREED AND SUITABLY RECORDED PRESIDENTIAL STATEMENT, HE ALSO NOTED THAT CONTINUED INSISTENCE ON A RESOLUTION WOULD, FOR THE MOMENT AND FOR TACTICAL REASONS, BE BEST IN ORDER TO CONSTITUTE PRESIDENTIAL STATEMENT AS MIDDLE-GROUND BETWEEN A CONFERENCE RESOLUTION AND CHINESE-TANZANIAN DESIRE FOR NOTHING.

5. CONSULTATIONS WILL CONTINUE 12 JUNE; AMERASINGHE DEPARTS PM 13TH.
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